

ORIGINAL

2-6-C0

FILED

MAY 19 2003

MARY E. D'ANDREA, CLERK
PER 2/8 CHBG, PA DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

AMANDA BARGE and
ARTHUR BARGE,
Plaintiffs

v.

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:
:
:
: CASE NUMBER: 1:00-CV-1881
:
:

DAVID J. SALINGER, M.D.;
WILLIAM YING, Ph.D.;
KEYSTONE ONCOLOGY, LLC d/b/a
HERITAGE HILLS ONCOLOGY CTR.;
COMPREHENSIVE PHYSICS AND
REGULATORY SERVICE, LTD. and
EQUIMED, INCORPORATED,
Defendants

:
:
:
:
: Judge Conner ✓
:
:

: JURY TRIAL DEMANDED

**REPLY OF DEFENDANTS WILLIAM YING, Ph.D.
AND COMPREHENSIVE PHYSICS AND
REGULATORY SERVICE, LTD.
TO PLAINTIFFS' PETITION FOR DELAY DAMAGES**

AND NOW COME Defendants, William Ying, Ph.D. and
Comprehensive Physics and Regulatory Service, Ltd., by and through

his counsel, Farrell & Ricci, P.C., by Joseph A. Ricci, Esquire, and Lawrence F. Barone, Esquire, replies to Plaintiffs' Petition for Delay Damages as follows:

1. Admitted.
2. Denied as stated. It is admitted only that Dr. Ying accepted service of a Complaint. By way of further answer, the Court's docket indicates that a Writ of Summons and Complaint were filed against Dr. Ying on May 7, 2001; however, there is no return of service in the Court records. (See docket attached as **Exhibit "A."**) Counsel for Dr. Ying indicated he would complete an authorization to accept service and, on July 23, 2001, entered his appearance. (See Entry of Appearance attached as **Exhibit "B."**) Accordingly, as Pa.R.C.P. 238 requires damages for delay to be awarded for the period of time from a date one year after the date **original process was first served** in an action up to the date of the award, verdict or decision, it cannot be determined on what date service was perfected. Defendants therefore specifically deny that on January 19, 2001, Plaintiffs served a Complaint upon Defendant Ying.

3. Denied as stated. It is admitted that on April 29, 2003, following a seven day trial before the Honorable Christopher Conner, the jury return a verdict of \$325,000.00 in favor of Plaintiff Amanda Barge and a verdict in favor of Plaintiff Arthur Barge in the amount of \$25,000.00. It is further admitted that the jury assessed 65% of the liability to Defendants Salinger and Keystone, and 35% of the liability to Defendants Ying and CPRS. However, pursuant to this Honorable Court's Order dated May 7, 2003, the Court moulded the verdict in response to Co-Defendants' unopposed Motion, and the Clerk of Court was directed to enter judgment of \$189,647.54 against Defendants Salinger and Keystone Oncology, LLC, and the Clerk of Court was further directed to enter a judgment of \$122,500.00 against Defendants Ying and Comprehensive Physics and Regulatory Service, Ltd. This amount constituted a reduction of the personal injury award to Plaintiff Amanda Barge by \$37,852.46, resulting from a stipulation that Blue Cross and Blue Shield had paid that amount towards medical bills and expenses. It is important to note that Arthur Barge's award for consortium damages may not be included in calculating delay damages.

See Anchorstar v. Mack Truck, 620 A.2d 1120. (Supreme Ct. Penna. 1997)

4. Admitted. By way of further response, in addition to the February 2003 joint offer of \$100,000.00, Defendants Ying and CPRS provided Plaintiffs a written settlement offer on March 6, 2003, offering various structured settlements, each offering over the life of the structure in excess of \$300,000.00. (See correspondence March 6, 2003, attached hereto and marked as **Exhibit "C."**) By way of further answer, the cost value of the proposed structural settlement offers was \$150,000.00.

5. Denied as stated. Pa.R.C.P. 238 delay damages are not available on a loss of consortium claim. See Anchorstar v. Mack Truck, 620 A.2d 1120 (Supreme Court Penna. 1997). Further, Pa.R.C.P. 238(a)(1) states that delay damages are available, "at the request of plaintiff in a civil action seeking monetary relief for bodily injury, death or property damages" Pa.R.C.P. 238(a)(2) indicates "damages for delay shall be awarded for the period of time from a date one year after the date

original process was first served in the action up to the date of the award.” There exists no Pa.R.C.P. 238(a)(2)(ii) as Plaintiffs state in their motion. Further, it is specifically denied that process was served on Defendant Ying on January 19, 2002, as earlier stated. Therefore, it is believed that the proper period for calculating any possible delay damages, if applicable, assertable against Defendant Ying, would be July 23, 2001, the date on which counsel for Defendants Ying and CPRS agreed to accept service.

6. Admitted.

7. Admitted in part, denied in part. It is admitted that Plaintiffs sought a continuance from March 3, 2003, and therefore the time period from March 3, 2003, until the date the award was entered on May 5, 2003, should be excluded. However, it is specifically denied that Pa.R.C.P. 238(b)(2) states that any delay caused by the plaintiff shall be excluded as is stated in Plaintiffs’ Motion. In fact, it is Pa.R.C.P. 238(b)(1)(ii) which indicates:

(b)(1) The period of time for which damages for delay shall be calculated under subdivision (a)(2) shall exclude the time period, if any,

...

(ii) during which the plaintiff caused delay of the trial.

Plaintiffs' Motion cites to the wrong section of Rule 238.

9. Denied. It is specifically denied that Plaintiffs are entitled to damages for delay in the amount of \$19,737.67. Specifically, Plaintiffs' calculations, according to Pa.R.C.P. 238 are substantially in error. To begin, Plaintiffs' use of the \$312,147.54 total is improper. This amount includes the \$25,000.00 of consortium damages awarded to Mr. Barge. As stated above, in Anchorstar, the Supreme Court of Pennsylvania held that consortium damages are not subject to compounded delay damage. Accordingly, the proper figure would be \$287,147.50, representing the moulded verdict of Mrs. Barge's award for bodily injury. Secondly, Plaintiffs' calculations beginning on January 19, 2002, are also incorrect. Defendant asserts that Plaintiffs

cannot prove the date on which Dr. Ying was actually served with the Complaint. Accordingly, their use of January 19, 2002, is incorrect. Further, the operative starting date to calculate delay damages differs for both Defendants. Calculations for Defendant Salinger begin February 16, 2001. Calculations for Defendant Ying begin July 23, 2001, assuming the Court chooses to use the July 23, 2001, date as the operative starting point. Accordingly, the proper calculations in assessing delay damages against Dr. Ying are as follows:

For 2002, July 23-December 31 (161 days), with interest at 5.75% at a per diem pro rata rate of \$15.83, Defendant Ying would be responsible for \$2,548.63.

For 2003, January 1-April 29 (119 days), with interest at 5.25% at a per diem pro rata rate of \$14.44, Defendant Ying would be responsible for \$1,718.36.

Therefore, the total amount owed by Defendant Ying would be \$4,266.99.

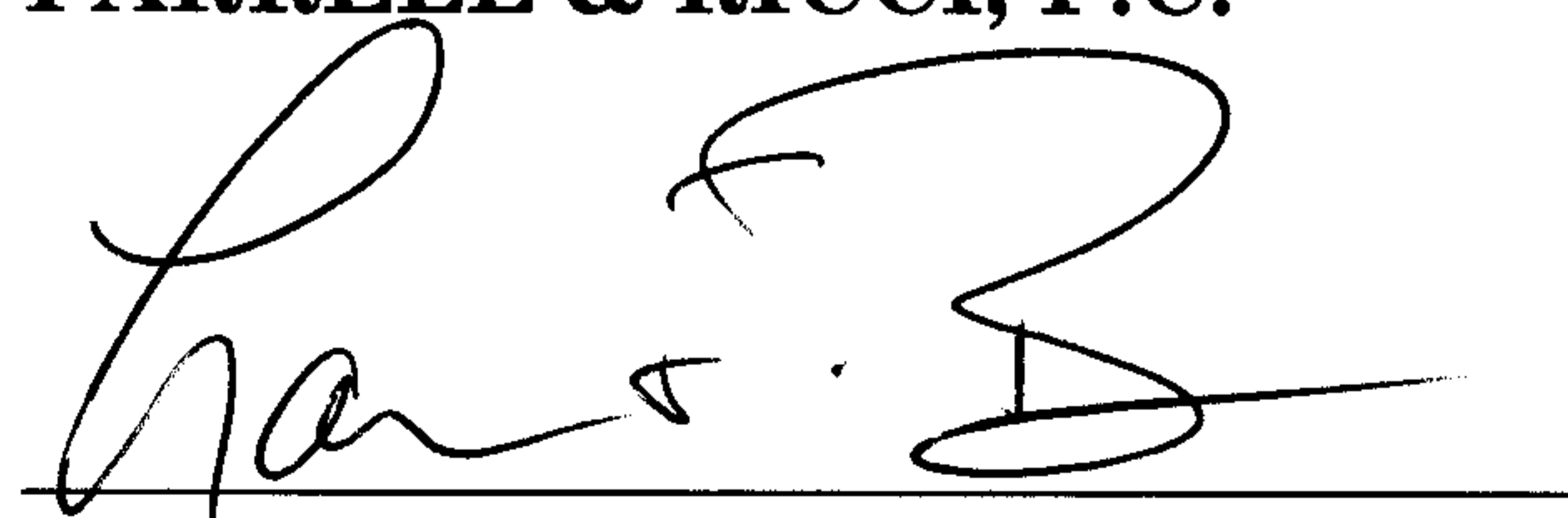
WHEREFORE, it is respectfully requested that this Honorable Court deny Plaintiffs' Petition for Delay Damages as Plaintiffs have used the wrong starting date and calculated the damages incorrectly. Further, Defendants also ask this Court to deny Plaintiffs' request for

docket costs in the amount of \$150.00, which are not addressed anywhere in his Petition.

Respectfully submitted,

FARRELL & RICCI, P.C.

Date: 5/16/03

A handwritten signature in black ink, appearing to read "Joseph A. Ricci", is written over a horizontal line.

Joseph A. Ricci, Esquire

Attorney I.D. No. 49803

Lawrence F. Barone

Attorney I.D. No. 68921

4423 North Front Street

Harrisburg, PA 17110

(717) 230-9201

Counsel for Defendants William Ying,
Ph.D. and Comprehensive Physics and
Regulatory Services, Ltd.

EXHIBIT A

1:00-cv-01881-CCC Barge, et al v. Salinger, et al
 Christopher C. Conner, presiding
 Date filed: 10/25/2000
 Date terminated: 05/08/2003 Date of last filing: 05/08/2003

History

Doc. No.	Dates	Description
--	Filed: 10/25/2000 Entered: 10/26/2000	③ Summons Issued
1	Filed: 10/25/2000 Entered: 10/26/2000	③ Complaint
--	Filed & Entered: 10/26/2000	③ Special Admission Form Sent
2	Filed & Entered: 10/27/2000	③ Letter
--	Filed: 12/15/2000 Entered: 12/18/2000	③ Special Admission Form Received (Must Have Credit Card on File)
3	Filed & Entered: 12/19/2000	③ Special Admissions Form Approved
4	Filed: 02/08/2001 Entered: 02/13/2001	③ Attorney Appearance - Entry of Appearance
--	Filed & Entered: 02/13/2001	③ Special Admission Form Sent
5	Filed & Entered: 02/16/2001	③ Waiver of Service Executed AS to Salinger
6	Filed & Entered: 02/27/2001	③ ICMS - converted docket entry
7	Filed & Entered: 02/27/2001	③ Attorney Substitution
8	Filed: 03/02/2001 Entered: 03/05/2001	③ Summons Returned Executed
8	Filed: 03/02/2001 Entered: 03/05/2001	③ Summons Returned Executed
9	Filed: 03/14/2001 Entered: 03/15/2001 Terminated: 03/15/2001	③ Motion for Extension of Time to File Answer
10	Filed: 03/15/2001 Entered: 03/16/2001	③ Order
11	Filed & Entered: 03/22/2001	③ ICMS - converted docket entry
12	Filed & Entered: 03/22/2001	③ Order
13	Filed & Entered: 04/03/2001	③ Case Management Form Returned
14	Filed: 04/04/2001 Entered: 04/05/2001	③ Case Management Form Returned
15	Filed & Entered: 04/06/2001	③ Answer to Complaint
16	Filed & Entered: 04/06/2001	③ Case Management Order - Complex Track

--	Filed: 05/07/2001 Entered: 05/11/2001	Summons Issued
17	Filed: 05/07/2001 Entered: 05/11/2001	Amended Complaint
--	Filed & Entered: 05/11/2001	Summons Issued
18	Filed: 06/08/2001 Entered: 11/06/2001	Answer to Complaint
18	Filed: 06/08/2001 Entered: 11/06/2001	Answer to Complaint
19	Filed: 07/09/2001 Entered: 07/10/2001	Praecipe
20	Filed & Entered: 09/04/2001 Terminated: 09/04/2001	Motion for Miscellaneous Relief
21	Filed & Entered: 09/04/2001	Order
22	Filed: 09/11/2001 Entered: 09/13/2001 Terminated: 09/13/2001	Stipulation

Doc. No.	Dates	Description
23	Filed & Entered: 09/13/2001	Set Deadlines/Hearings
23	Filed & Entered: 09/13/2001	Order
24	Filed: 11/05/2001 Entered: 11/06/2001	Answer to Complaint
25	Filed: 11/05/2001 Entered: 11/06/2001	Response
26	Filed & Entered: 02/11/2002	Praecipe
27	Filed & Entered: 02/19/2002	Case Stayed
27	Filed & Entered: 02/19/2002	Set Deadlines/Hearings
27	Filed & Entered: 02/19/2002	Order
28	Filed: 05/03/2002 Entered: 05/07/2002	Praecipe
29	Filed: 05/03/2002 Entered: 05/07/2002	Attorney Appearance - Entry of Appearance
30	Filed & Entered: 05/28/2002	Letter
31	Filed: 06/24/2002 Entered: 06/25/2002 Terminated: 06/25/2002	Stipulation
32	Filed: 06/25/2002 Entered: 06/27/2002	Set Deadlines/Hearings

32	Filed: 06/25/2002 Entered: 06/27/2002	③ Order
33	Filed: 07/10/2002 Entered: 07/11/2002	③ Mail Returned
34	Filed: 07/18/2002 Entered: 07/23/2002	③ Notice of Change of Address
35	Filed & Entered: 08/15/2002	③ Order Assigning/Reassigning Case
35	Filed & Entered: 08/15/2002	③ Order
36	Filed & Entered: 01/16/2003	③ ICMS - converted docket entry
37	Filed & Entered: 01/22/2003	③ Set Deadlines/Hearings
37	Filed & Entered: 01/22/2003	③ Order
--	Filed: 02/19/2003 Entered: 02/20/2003	③ Proposed Document
38	Filed: 02/19/2003 Entered: 02/20/2003	③ Voir Dire Questions
39	Filed: 02/19/2003 Entered: 02/20/2003	③ Jury Instructions
40	Filed: 02/19/2003 Entered: 02/20/2003	③ Pretrial Memorandum
41	Filed: 02/19/2003 Entered: 02/20/2003	③ Jury Instructions
42	Filed: 02/19/2003 Entered: 02/20/2003	③ Voir Dire Questions
43	Filed: 02/19/2003 Entered: 02/20/2003	③ Pretrial Memorandum
44	Filed: 02/19/2003 Entered: 02/20/2003	③ Points for Charge
45	Filed: 02/19/2003 Entered: 02/20/2003	③ Voir Dire Questions

Doc. No.	Dates	Description
46	Filed: 02/19/2003 Entered: 02/20/2003	③ Pretrial Memorandum
47	Filed & Entered: 02/21/2003	③ ICMS - converted docket entry
48	Filed & Entered: 02/21/2003	③ Order
49	Filed: 02/27/2003 Entered: 03/03/2003	③ Amended Document
--	Filed: 03/03/2003 Entered: 03/07/2003	③ Jury List

<u>53</u>	Filed: 03/05/2003 Entered: 03/08/2003	② Trial Brief
<u>55</u>	Filed: 03/10/2003 Entered: 03/11/2003	② Trial Brief
<u>56</u>	Filed: 03/10/2003 Entered: 03/11/2003	③ Jury Instructions
<u>58</u>	Filed: 03/10/2003 Entered: 03/11/2003	③ Request
<u>57</u>	Filed & Entered: 03/11/2003	③ Scheduling Order
<u>60</u>	Filed: 03/31/2003 Entered: 04/01/2003	③ Response
<u>61</u>	Filed & Entered: 04/02/2003	③ Order
<u>61</u>	Filed & Entered: 04/02/2003	③ Terminate Case Associations
<u>63</u>	Filed: 04/23/2003 Entered: 04/24/2003	③ Transcript
<u>64</u>	Filed: 04/24/2003 Entered: 04/25/2003	③ Proposed Document
<u>65</u>	Filed: 04/24/2003 Entered: 04/25/2003	② Points for Charge
<u>66</u>	Filed & Entered: 04/25/2003	③ Proposed Jury Instructions
<u>67</u>	Filed & Entered: 04/28/2003	③ Proposed Jury Instructions
<u>77</u>	Filed: 04/29/2003 Entered: 05/08/2003	③ Exhibit List
<u>78</u>	Filed: 04/29/2003 Entered: 05/08/2003	③ Exhibit List
<u>79</u>	Filed: 04/29/2003 Entered: 05/08/2003	③ Exhibit List
<u>80</u>	Filed: 04/29/2003 Entered: 05/08/2003	③ Exhibit List
<u>81</u>	Filed: 04/29/2003 Entered: 05/08/2003	③ Jury Questions
<u>82</u>	Filed: 04/29/2003 Entered: 05/08/2003	③ Jury Verdict
<u>83</u>	Filed: 04/29/2003 Entered: 05/08/2003	③ Acknowledgement Received
<u>68</u>	Filed: 05/01/2003 Entered: 05/02/2003 Terminated: 05/07/2003	③ Motion for Miscellaneous Relief
<u>76</u>	Filed & Entered: 05/07/2003	③ Motion for Damages
<u>84</u>	Filed: 05/07/2003 Entered: 05/08/2003	③ Order on Motion for Miscellaneous Relief

85	Filed & Entered: 05/08/2003	Judgment
85	Filed & Entered: 05/08/2003	Order Terminating Case

Doc. No.	Dates	Description
85	Filed & Entered: 05/08/2003	Judgment Index - Add Record

PACER Service Center			
Transaction Receipt			
05/14/2003 10:29:00			
PACER Login:	mh0153	Client Code:	000872-00078
Description:	HistDocQry	Case Number:	1:00-cv-01881-CCC
Billable Pages:	3	Cost:	0.21

Full docket text for document 5:

WAIVER OF SERVICE OF SUMMONS returned as to defendant David J. Salinger M.D., defendant Heritage Hills Oncol ;request sent 1/16/01 (sm)

PACER Service Center			
Transaction Receipt			
05/14/2003 10:29:33			
PACER Login:	mh0153	Client Code:	000872-00078
Description:	HistDocQry	Case Number:	1:00-cv-01881-CCC
Billable Pages:	1	Cost:	0.07

EXHIBIT B

ACCELETRONICS VENTURES, INC.,
t/a Accel Service Company,
Plaintiff

v.

EQUIMED, INC. and
JOSEPH BOWMAN and
BARBARA BOWMAN t/a
COMPREHENSIVE PHYSICS AND
REGULATORY SERVICES, LTD.
Defendants

IN THE COURT OF COMMON PLEAS
CHESTER COUNTY, PENNSYLVANIA

NO. 00-01415

CIVIL ACTION - LAW

JURY TRIAL DEMANDED

ENTRY OF APPEARANCE


Please enter the appearance of the undersigned as counsel for Defendants, Joseph Bowman and Barbara Bowman t/a Comprehensive Physics and Regulatory Services, Ltd., in the above-captioned matter.

Respectfully submitted,

FARRELL & RICCI, P.C.

Date: 7/23/01


Joseph A. Ricci, Esquire
Attorney I.D. No. 49803


Colleen E. Ehresman, Esquire
Attorney I.D. No. 82482
4423 North Front Street
Harrisburg, PA 17110
(717) 230-9201
Counsel for Defendants Joseph Bowman and
Barbara Bowman t/a Comprehensive Physics and
Regulatory Services, Ltd.

CERTIFICATE OF SERVICE

AND NOW, this 24th day of July, 1998, I, Joseph A. Ricci, Esquire, hereby certify that I served a true and correct copy of the foregoing *Entry of Appearance* upon all counsel of record by depositing a copy of same in the United States mail, regular delivery, postage prepaid at Harrisburg, Pennsylvania, addressed as follows:

Bruce Alan Herald, Esquire
120 John Robert Thomas Drive
Exton, PA 19341-2654

EquiMed, Inc.
2171 Sandy Drive
State College, PA 16803


Joseph A. Ricci, Esquire

EXHIBIT C

Farrell & Ricci, P.C.

Attorneys and Counselors at Law
4423 North Front Street
Harrisburg, PA 17110

March 6, 2003

Michael A. Farrell
Joseph A. Ricci †
Marc T. Levin*
Daniel J. Gallagher
Stephen R. Harris
Gregory D. Geiss
Thomas M. Fraticelli
Lawrence F. Barone
Lynn A. Matz *

Telephone: (717) 230-9201
Fax: (717) 230-9202
E-mail: jricci@frpclaw.com

*also admitted in New Jersey

SENT VIA FAX-410/296-0080
Louis G. Close, III, Esquire
22 West Pennsylvania Avenue
Suite 300
Towson, MD 21204

RE: Barge v. Ying/Comprehensive Physics and Regulatory Services, Ltd.
Docket No. 1:00 -CV-1881 (MDPA) (Judge Conner)
Our File No. CIC-102

Dear Lou:

This letter will confirm our telephone conversation concerning settlement of the above-referenced matter. As I explained, my client, in the interest of trying to find a way to come to a resolution of this matter, has offered to place settlement funds in the form of a structured settlement. One proposal includes \$50,000.00 in up-front cash, as you will see. The other proposal structures the entire amount of settlement funds on behalf of Dr. Ying.

I have enclosed a copy of both of the structured proposals for your clients' review. You will note that these proposals produce significant amounts of money over the life of the structure. Further, you will note that these proposals do have right of survivorship benefits so that both Mr. and Mrs. Barge are protected throughout their lives.

Would you please provide my office with your clients' response to the structures. Your cooperation in this regard is greatly appreciated.

Very truly yours,


Joseph A. Ricci

JAR/kat

Enclosures

cc: Richard Oare, Esquire
B. Craig Black, Esquire



SETTLEMENT PLANNING ASSOCIATES
Two Sides—One Solution

875 North Michigan Avenue
Suite 1900
Chicago, Illinois 60611-1803
1.877.772.4436
www.settlementplanning.com

March 5, 2003

SETTLEMENT PROPOSAL FOR Amanda Barge and Arthur Barge

Prepared by:
Casey McCarthy, CSSC, MBA
DIRECT 312.988.3134
FACSIMILE 312.280.7211
E-MAIL cmccarth@nnng.com

ASSUMPTIONS	CLAIMANT NAME: Amanda Barge	CLAIMANT NAME: Arthur Barge
	SEX: Female	SEX: Male
	DATE OF BIRTH: 03/15/1956	DATE OF BIRTH: Assumed Age: 47

INCOME-TAX FREE SETTLEMENT PROPOSAL

CASH AT SETTLEMENT

\$50,000.00 cash payment to the claimant inclusive of attorney fees and all liens and expenses.

BENEFITS FOR AMANDA BARGE AND ARTHUR BARGE

Annual Lifetime Benefits - 100% Joint and Survivor

\$4,000.00 per year for the joint lives of Amanda Barge and Arthur Barge, guaranteed for 35 years regardless of their mortality, beginning on April 1, 2004. The amount of the payment shall increase by 2% compounding annually on April 1st of each year beginning April 1, 2005. The final guaranteed payment will be on April 1, 2038. Payments will continue to be made as long as at least one of the annuitants is living.

GUARANTEED LUMP SUMS

\$5,000.00 guaranteed payment on April 1, 2013.
\$15,000.00 guaranteed payment on April 1, 2023.
\$33,500.00 guaranteed payment on April 1, 2033.

TOTAL SETTLEMENT (INCLUSIVE of front cash)

COST	\$	150,000.00
GUARANTEED BENEFITS	\$	303,478.00
EXPECTED BENEFITS	\$	319,637.00



SETTLEMENT PLANNING ASSOCIATES
Two Sides—One Solution

875 North Michigan Avenue
Suite 1900
Chicago, Illinois 60611-1803
1.877.772.4436
www.settlementplanning.com

March 5, 2003

SETTLEMENT PROPOSAL FOR Amanda Barge and Arthur Barge

Prepared by:
Casey McCarthy, CSSC, MBA
DIRECT 312.988.3134
FACSIMILE 312.280.7211
E-MAIL cmccarth@nnng.com

ASSUMPTIONS	CLAIMANT NAME: Amanda Barge	CLAIMANT NAME: Arthur Barge
	SEX: Female	SEX: Male
	DATE OF BIRTH: 03/15/1956	DATE OF BIRTH: Assumed Age: 47

INCOME-TAX FREE SETTLEMENT PROPOSAL

BENEFITS FOR AMANDA BARGE AND ARTHUR BARGE

Annual Lifetime Benefits - 100% Joint and Survivor

\$6,000.00 per year for the joint lives of Amanda Barge and Arthur Barge, guaranteed for 35 years regardless of their mortality, beginning on April 1, 2004. The amount of the payment shall increase by 2% compounding annually on April 1st of each year beginning April 1, 2005. The final guaranteed payment will be on April 1, 2038. Payments will continue to be made as long as at least one of the annuitants is living.

GUARANTEED LUMP SUMS

\$10,000.00 guaranteed payment on April 1, 2013.

\$20,000.00 guaranteed payment on April 1, 2023.

\$47,000.00 guaranteed payment on April 1, 2033.

TOTAL SETTLEMENT (EXCLUSIVE of front cash)

COST	\$	150,000.00
GUARANTEED BENEFITS	\$	376,967.00
EXPECTED BENEFITS	\$	401,206.00


CERTIFICATE OF SERVICE

AND NOW, this 16th day of May, 2003, I, Lawrence F. Barone, Esquire, hereby certify that I served a true and correct copy of the foregoing ***Reply to Plaintiffs' Petition for Delay Damages*** upon all counsel of record by depositing a copy of same in the United States mail, regular delivery, postage prepaid at Harrisburg, Pennsylvania, addressed as follows:

Richard Oare, Esquire
1434 South George Street
York, PA 17403

Louis G. Close, III, Esquire
22 West Pennsylvania Avenue
Suite 300
Towson, MD 21204

B. Craig Black, Esquire
Robert A. McDermott, Esquire
McKissock & Hoffman, P.C.
2040 Linglestown Road
Suite 302
Harrisburg, PA 17110



Lawrence F. Barone, Esquire